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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 5 Original

THE STATE OF NEBRASKA, COMPLAINANT,

vs.

THE STATE OF WYOMING, DEFENDANT,

and

THE STATE OF COLORADO, IMPLEADED DEFENDANT,

THE UNITED STATES OF AMERICA, INTERVENER.

JOINT MOTION FOR APPROVAL OF STIPULATION AND TO MODIFY AND SUPPLEMENT THE DECREE ENTERED BY THE COURT ON OCTOBER 8, 1945.

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Attorney General,

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vs.

THE STATE OF WYOMING, DEFENDANT,

and

THE STATE OF COLORADO, IMPLEADED DEFENDANT,

THE UNITED STATES OF AMERICA, INTERVENER.

JOINT MOTION FOR APPROVAL OF STIPULATION AND TO MODIFY AND SUPPLEMENT THE DECREE ENTERED BY THE COURT ON OCTOBER 8, 1945.

The State of Nebraska, the State of Wyoming, the State of Colorado and the United States of America submit herewith a form of order approving a stipulation dated January 14, 1953, and modifying and supplementing the decree entered in this case on October 8, 1945 (325 U.S. 665) and move the Court to enter such an order.

This motion is made pursuant to the first paragraph of paragraph XIII of the decree of October 8, 1945 (325 U.S.

665, 671) and is based on the stipulation of the parties dated January 14, 1953, and filed January 30, 1953, a copy of which is attached.

STATE OF NEBRASKA

By CLARENCE S. BECK,
Attorney General,

BERT L. OVERCASH,
Asst. Atty. General,

STATE OF WYOMING

By HOWARD B. BLACK,
Attorney General,

STATE OF COLORADO

By DUKE W. DUNBAR,
Attorney General,

H. LAWRENCE HINKLEY,
Deputy Atty. General,

JEAN S. BREITENSTEIN,
Attorney for Colorado
Water Conservation Bd.

UNITED STATES OF AMERICA
By ROBERT L. STERN,
Acting Solicitor General.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 5 Original

THE STATE OF NEBRASKA, COMPLAINANT,

vs.

THE STATE OF WYOMING, DEFENDANT,

and

THE STATE OF COLORADO, IMPLEADED DEFENDANT,

THE UNITED STATES OF AMERICA, INTERVENER.

STIPULATION

Whereas, the State of Colorado on or about September 6, 1951, notified the States of Wyoming and Nebraska, and the United States that the State of Colorado would seek, either by negotiations among the parties or by application to the United States Supreme Court to modify or remove the restrictions imposed upon the State of Colorado in the Decree entered in this cause by the United States Supreme Court on October 8, 1945.

Whereas, the State of Colorado bases its claim for modification of the Decree upon the provisions of Article XIII of the Decree and the facts that (1) land is now and for a number of years has been irrigated within the Kendrick Project in Wyoming, (2) substantial quantities of water have become available for storage and use in connection with the Kendrick Project, (3) the United States Bureau of Reclamation has

prepared plans for, and has proposed the construction of, a new reservoir on the North Platte River near the town of Glendo, Wyoming, and (4) since 1940 the water supply of the North Platte River basin has been in excess of that which occurred during the period 1931-1940.

Whereas, the State of Colorado represents that the irrigated acreage in Jackson County, Colorado, in the year 1952 is 134,467 acres and that the Jackson County ranchers need to put additional land under irrigation in order to maintain their existing economy, but cannot safely engage in any project for the irrigation of additional land for fear of violation of the 1945 Decree.

Whereas, the parties have carried on extensive negotiations concerning the claim by Colorado for modification of the Decree in the course of which negotiations Colorado has repeatedly asserted that it must press for modification of the Decree because if it does not do so, it fears that it will be met with the objection that it has sat back and done nothing while the uses of water under the Kendrick project are established by the storage of water and the application of such stored water to the irrigation of Kendrick Project lands.

Whereas, the State of Nebraska takes the position that all matters growing out of the provisions of the Act of August 9, 1937 (50 Stat. 564-595) are matters which cannot affect the rights of the State of Nebraska as previously determined by the court, and that by the approval of this stipulation it is understood that the State of Nebraska does not recede from this position and does not concede that any developments on the Kendrick Project can ever affect the rights or position of the State of Nebraska.

Whereas, the State of Nebraska contends that there has been no substantial amount of increase in the flow of water into Nebraska through the North Platte River since the date of the entry of the Decree herein; and that the State of Colorado has not since said date increased its acreage of

land under irrigation from the North Platte River to the limit permitted by said Decree.

Whereas, the State of Wyoming takes the position that the Act of August 9, 1937 (50 Stat. 564-595) confers no right on the State of Colorado to increased water uses within the natural basin of the North Platte River in Colorado superior to any right to store or to divert water for the Kendrick Project in Wyoming; and the State of Wyoming, by the approval of this stipulation, does not concede the validity of any claim by Colorado based upon the said Act of August 9, 1937, or waive any right to oppose any claim by Colorado based thereon; and further, the State of Wyoming, by the approval of this stipulation, does not recognize, and it is Wyoming's position, that Colorado has no equitable right, as against Wyoming, to increased water uses in Colorado.

Whereas, the parties hereto desire to recognize the present conditions of water supply in the North Platte basin, but do not desire in any way to retreat from the legal positions taken by them based upon conditions considered by the Court in previous proceedings in this case.

Whereas, the construction of the Glendo Reservoir would provide storage for regulating flows in the North Platte River at Glendo to supply water for the irrigation of lands in the basin of the North Platte River in western Nebraska, and to supply water for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir, and would provide additional regulation of natural flow and storage water below Alcova Reservoir, and would improve efficiency in irrigation operations and would permit additional power production.

Whereas, it is expected that after recognizing all existing rights and other rights provided for in this stipulation in and to the use of North Platte River water, the natural flow waters impounded in Glendo Reservoir will be used to supply annually 25,000 acre feet of water for the irrigation of

lands in the basin of the North Platte River in western Nebraska, and to supply annually 15,000 acre feet of water for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir; provided, however, that it is not contemplated that the regimen of the natural flow of the North Platte River above Pathfinder Reservoir will be changed by the operation of Glendo Reservoir, or that the regimen of the natural flow of the North Platte River below Pathfinder Reservoir will be changed by such operations, except to the extent necessary to provide for such additional supply, and to permit operations in accordance with the provisions of Article XVII hereinafter set forth.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED that after this stipulation becomes effective, the parties will file a joint motion with the United States Supreme Court, to which this stipulation shall be attached, requesting the Court to approve this stipulation and to modify and supplement the existing Decree of October 8, 1945, in the following particulars:

1. In Article I (a) of the Decree the figure "145,000" shall be substituted for the figure "135,000."

2. The following new Articles shall be added at the foot of the Decree:

XVI.

Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564-595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII.

In the event that Glendo Reservoir is constructed, the following provisions shall be effective:

(a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the Decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam. The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40,000 acre feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of the Decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage, and, further, the amount of such storage water that may be held in storage at any one time, including carryover storage, shall never exceed 100,000 acre feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in Western Nebraska to the extent of 25,000 acre feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir to the extent of 15,000 acre feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant

to contract; nor to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit dated December 1952, for the purpose of creating a head for the development of water power.

(c) Article III of the Decree shall be amended by striking the word "and" immediately preceding, and by inserting immediately following the words "Fourth, Alcova Reservoir," the words "Fifth, Glendo Reservoir;" and the storage rights of Glendo Reservoir shall be subject to the provisions of said Article III.

(d) Article IV hereof, and the injunction therein granted as to storage of water in Pathfinder, Guernsey, Seminoe or Alcova Reservoirs shall be extended to include Glendo on the same basis, and Glendo shall be added to the number of the four reservoirs therein listed as junior to the Nebraska appropriations therein mentioned.

(e) Article V of the Decree, relating to reservoir evaporation losses and river carriage losses, shall be amended as follows:

1. Amend the heading "Guernsey Reservoir" to read "Glendo and Guernsey Reservoirs."
2. Amend the table under the heading "River Carriage Losses" to read as follows:

TABLE

River Section	Area Acres	Daily Loss—Second Feet May	June	July	Aug.	Sept.
Alcova to Glendo Reservoir	6,740	43	61	70	61	45
Guernsey Reservoir to Whalen	560	4	5	6	5	4
Whalen to State Line	2,430	16	22	25	22	16

3. After the first paragraph following the table insert a new paragraph to read as follows:

"Above table does not contain computed loss for section of river from Glendo Dam to head of Guernsey Reservoir (area 680 acres) because this area is less than submerged area of original river bed (940 acres) in Glendo Reservoir and is, therefore, considered as off-set."

XVIII.

Any of the parties may apply at the foot of this Decree for its amendment or for further relief, except that for a period of five years from and after the date of the entry of the Amended Decree the State of Colorado shall not institute any proceedings for the amendment of the Decree or for further relief. In the event that within said period of five years any other party applies for an amendment of the Decree or for further relief, then the State of Colorado may assert any and all rights, claims or defenses available to it under the Decree as amended.

IT IS FURTHER STIPULATED AND AGREED that this stipulation will become effective when:

1. By appropriate legislative and official action the State of Wyoming has approved a permit for the construction and operation of Glendo Dam and Reservoir in substantial conformity with the Bureau of Reclamation Definite Plan Report for the Glendo Unit, dated December 1952; and

2. The appropriate authorities of the States of Nebraska, Wyoming and Colorado, and the United States have approved this stipulation; and

3. The States of Nebraska, Wyoming and Colorado have submitted to the Secretary of the Interior comments

approving the Bureau of Reclamation Definite Plan Report for the Glendo Unit, dated December 1952;

provided that this stipulation shall be without effect unless it is executed by the parties, and the three foregoing conditions met, on or before June 1, 1953.

Dated January 14, 1953.

STATE OF NEBRASKA

By CLARENCE S. BECK,
Attorney General

BERT L. OVERCASH,
Assistant Atty. General,

STATE OF COLORADO

By DUKE W. DUNBAR,
Attorney General,

H. LAWRENCE HINKLEY,
Deputy Atty. General,

GEORGE J. BAILEY,
Vice Chairman, Colorado Water Conservation Bd.,

JEAN S. BREITENSTEIN,
Attorney for Colorado Water Conservation Bd.

STATE OF WYOMING

By H. S. HARNSBERGER,
Attorney General,

W. J. WEHRLI,
Special Counsel,

L. C. BISHOP,
State Engineer,

UNITED STATES OF AMERICA

By WALTER H. WILLIAMS,
Atty., Dept. of Justice,

C. V. MARMADUKE, JR.,
Special Assistant to the Attorney General

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 5 Original

THE STATE OF NEBRASKA, COMPLAINANT,

vs.

THE STATE OF WYOMING, DEFENDANT,

and

THE STATE OF COLORADO, IMPLEADED DEFENDANT,

THE UNITED STATES OF AMERICA, INTERVENER.

ORDER MODIFYING AND SUPPLEMENTING DECREE OF OCTOBER 8, 1945.

The parties to this cause having filed a stipulation, dated January 14, 1953, and a joint motion for approval of the stipulation and to modify and supplement the decree entered on October 8, 1945 (325 U.S. 665) and the Court being fully advised:

The stipulation dated January 14, 1953, is approved; and

IT IS ORDERED that the decree of October 8, 1945, is hereby modified and supplemented as follows:

1. In paragraph I (a) of the decree the figure "145,000" is substituted for the figure "135,000."

2. Paragraph XIII is amended by striking the first sentence and substituting for it the following:

> Any of the parties may apply at the foot of this decree for its amendment or for further relief, except that for a period of five years from and after [the date of the entry of this order to be inserted by the Court] the State of Colorado shall not institute any proceedings for the amendment of the decree or for further relief. In the event that within said period of five years any other party applies for an amendment of the decree or for further relief, then the State of Colorado may assert any and all rights, claims or defenses available to it under the decree as amended.

3. Two new paragraphs, as follows, are added to the decree:

> XVI. Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564-595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

> XVII. When Glendo Dam and Reservoir are constructed, the following provisions shall be effective:

> (a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

> (b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam.

The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40,000 acre feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of this decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage; and, further, the amount of such storage water that may be held in storage at any one time, including carryover storage, shall never exceed 100,000 acre feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in western Nebraska to the extent of 25,000 acre feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir to the extent of 15,000 acre feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; nor to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit dated December 1952, for the purpose of creating a head for the development of water power.

(c) Paragraph III of the decree is amended to read as follows:

III. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby

severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs otherwise than in accordance with the relative storage rights, as among themselves, of such reservoirs, which are hereby defined and fixed as follows:

First, Pathfinder Reservoir;

Second, Guernsey Reservoir;

Third, Seminoe Reservoir;

Fourth, Alcova Reservoir; and

Fifth, Glendo Reservoir;

Provided, however that water may be impounded in or released from Seminoe Reservoir, contrary to the foregoing rule of priority operation for use in the generation of electric power when and only when such storage or release will not materially interfere with the administration of water for irrigation purposes according to the priority decreed for the French Canal and the State Line Canals.

Storage rights of Glendo Reservoir shall be subject to the provisions of this paragraph III.

(d) Paragraph IV of the decree is amended to read as follows:

IV. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs, and from the diversion of natural flow water through the Casper Canal for the Kendrick Project between and including May 1 and September 30 of each year otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska lands

supplied by the French Canal and by the State Line Canals, which said Nebraska appropriations are hereby adjudged to be senior to said five reservoirs and said Casper Canal, and which said Nebraska appropriations are hereby identified and defined, and their diversion limitations in second feet and seasonal limitations in acre feet fixed as follows:

Lands	Canal	Limitation in Sec. Feet	Seasonal Limitation in Acre Ft.
Tract of 1025 acres	French	15	2,227
Mitchell Irrigation District	Mitchell	195	35,000
Gering Irrigation District	Gering	193	36,000
Farmers Irrigation District	Tri-State	748	183,050
Ramshorn Irrigation District	Ramshorn	14	3,000

(e) Paragraph V of the decree is amended to read as follows:

V. The natural flow in the Guernsey Dam to Tri-State Dam section between and including May 1 and September 30 of each year, including the contribution of Spring Creek, be and the same hereby is apportioned between Wyoming and Nebraska on the basis of twenty-five per cent to Wyoming and seventy-five per cent to Nebraska, with the right granted Nebraska to designate from time to time the portion of its share which shall be delivered into the Interstate, Fort Laramie, French and Mitchell Canals for use on the Nebraska lands served by these canals. The State of Nebraska, its officers, attorneys, agents and employees, and the State of Wyoming, its officers, attorneys, agents and employees, are hereby enjoined and restrained from diversion or use contrary to this apportionment, provided that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day, as shown by the measurements and

computations for that day, and provided further, that unless and until Nebraska, Wyoming and the United States agree upon a modification thereof, or upon another formula, reservoir evaporation and transportation losses in the segregation of natural flow and storage shall be computed in accordance with the following formula taken from United States' Exhibit 204A and the stipulation of the parties dated January 14, 1953, and filed on January 30, 1953:

Reservoir Evaporation Losses.

Seminoe, Pathfinder and Alcova Reservoirs.

Evaporation will be computed daily based upon evaporation from Weather Bureau Standard 4 foot diameter Class "A" pan located at Pathfinder Reservoir. Daily evaporation will be multiplied by area of water surface of reservoir in acres and by co-efficient of 70% to reduce pan record to open water surface.

Glendo and Guernsey Reservoirs.

Compute same as above except use pan evaporation at Whalen Dam.

River Carriage Losses.

River carriage losses will be computed upon basis of area of river water surface as determined by aerial surveys made in 1939 and previous years and upon average monthly evaporation at Pathfinder reservoir for the period 1921 to 1939, inclusive, using a co-efficient of 70% to reduce pan records to open water surface.

Daily evaporation losses in second-feet for various sections of the river are shown in the following table:

TABLE

River Section	Area Acres	Daily Loss—Second Feet May	June	July	Aug.	Sept.
Alcova to Glendo Reservoir	6,740	43	61	70	61	45
Guernsey Reservoir to Whalen	560	4	5	6	5	4
Whalen to State Line	2,430	16	22	25	22	16

Above table is based upon mean evaporation at Pathfinder as follows: May .561 ft.; June .767 ft.; July .910 ft.; Aug. .799 ft.; Sept. .568 ft. Co-efficient of 70% to reduce pan record to open water surface.

Above table does not contain computed loss for section of river from Glendo Dam to head of Guernsey Reservoir (area 680 acres) because this area is less than submerged area of original river bed (940 acres) in Glendo Reservoir and is, therefore, considered as off-set.

Above table does not contain computed loss for section of river from Pathfinder Dam to head of Alcova Reservoir (area 170 acres) because this area is less than submerged area of original river bed in Alcova Reservoir and is, therefore, considered as off-set.

Likewise the area between Seminoe Dam and head of Pathfinder Reservoir is less than area of original river bed through Pathfinder Reservoir —considered as off-set. Evaporation losses will be divided between natural flow and storage water flowing in any section of river channel upon a proportional basis. This proportion will ordinarily be determined at the upper end of the sec-

tion except under conditions of intervening accruals or diversions that materially change the ratio of storage to natural flow at the lower end of the section. In such event the average proportion for the section will be determined by using the mean ratio for the two ends of the section.

In the determination of transportation losses for the various sections of the stream, such time intervals for the passage of water from point to point shall be used as may be agreed upon by Nebraska, Wyoming and the United States, or in the absence of such agreement, as may be decided upon from day to day by the manager of the government reservoirs, with such adjustments to be made by said manager from time to time as may be necessary to make as accurate a segregation as is possible.

5-57

SUPREME COURT OF THE UNITED STATES

No. 5 ORIGINAL.—OCTOBER TERM, 1952.

THE STATE OF NEBRASKA, Complainant,

v.

THE STATE OF WYOMING, Defendant,

and

THE STATE OF COLORADO, Impleaded Defendant,
THE UNITED STATES OF AMERICA, Intervener.

Order Modifying and Supplementing Decree of October 8, 1945.

[June 15, 1953.]

The parties to this cause having filed a stipulation, dated January 14, 1953, and a joint motion for approval of the stipulation and to modify and supplement the decree entered on October 8, 1945 (325 U. S. 665) and the Court being fully advised:

The stipulation dated January 14, 1953, is approved; and

IT IS ORDERED that the decree of October 8, 1945, is hereby modified and supplemented as follows:

1. In paragraph I (a) of the decree the figure "145,000" is substituted for the figure "135,000."

2. Paragraph XIII is amended by striking the first sentence and substituting for it the following:

> Any of the parties may apply at the foot of this decree for its amendment or for further relief, except

that for a period of five years from and after [the date of the entry of this order to be inserted by the Court] the State of Colorado shall not institute any proceedings for the amendment of the decree or for further relief. In the event that within said period of five years any other party applies for an amendment of the decree or for further relief, then the State of Colorado may assert any and all rights, claims or defenses available to it under the decree as amended.

3. Two new paragraphs, as follows, are added to the decree:

XVI. Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564–595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII. When the Glendo Dam and Reservoir are constructed, the following provisions shall be effective:

(a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam. The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40,000 acre feet of the natural flow of the North Platte River and its tribu-

taries which cannot be stored in upstream reservoirs under the provisions of this decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage, and, further, the amount of such storage water that may be held in storage at any one time, including carryover storage, shall never exceed 100,000 acre feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in western Nebraska to the extent of 25,000 acre feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir to the extent of 15,000 acre feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; nor to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit dated December 1952, for the purpose of creating a head for the development of water power.

(c) Paragraph III of the decree is amended to read as follows:

III. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs otherwise than in ac-

cordance with the relative storage rights, as among themselves, of such reservoirs, which are hereby defined and fixed as follows:

First, Pathfinder Reservoir;

Second, Guernsey Reservoir;

Third, Seminoe Reservoir;

Fourth, Alcova Reservoir; and

Fifth, Glendo Reservoir;

Provided, however that water may be impounded in or released from Seminoe Reservoir, contrary to the foregoing rule of priority operation for use in the generation of electric power when and only when such storage or release will not materially interfere with the administration of water for irrigation purposes according to the priority decreed for the French Canal and the State Line Canals.

Storage rights of Glendo Reservoir shall be subject to the provisions of this paragraph III.

(d) Paragraph IV of the decree is amended to read as follows:

IV. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs, and from the diversion of natural flow water through the Casper Canal for the Kendrick Project between and including May 1 and September 30 of each year otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska lands supplied by the French Canal and by the State Line Canals, which said Nebraska appropriations are hereby adjudged to be senior to said five reservoirs and said Casper Canal, and which said Nebraska

appropriations are hereby identified and defined, and their diversion limitations in second feet and seasonal limitations in acre feet fixed as follows:

Lands	Canal	Limitation in Sec. Feet	Seasonal Limitation in Acre Ft.
Tract of 1025 acres	French	15	2,227
Mitchell Irrigation District	Mitchell	195	35,000
Gering Irrigation District	Gering	193	36,000
Farmers Irrigation District	Tri-State	748	183,050
Ramshorn Irrigation District	Ramshorn	14	3,000

(e) Paragraph V of the decree is amended to read as follows:

V. The natural flow in the Guernsey Dam to Tri-State Dam section between and including May 1 and September 30 of each year, including the contribution of Spring Creek, be and the same hereby is apportioned between Wyoming and Nebraska on the basis of twenty-five per cent to Wyoming and seventy-five per cent to Nebraska, with the right granted Nebraska to designate from time to time the portion of its share which shall be delivered into the Interstate, Fort Laramie, French and Mitchell Canals for use on the Nebraska lands served by these canals. The State of Nebraska, its officers, attorneys, agents and employees, and the State of Wyoming, its officers, attorneys, agents and employees, are hereby enjoined and restrained from diversion or use contrary to this apportionment, provided that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day, as shown by the measurements and computations for that day, and provided further, that unless and until Nebraska, Wyoming and the United States agree upon a modification thereof, or upon another formula, reservoir evaporation and

transportation losses in the segregation of natural flow and storage shall be computed in accordance with the following formula taken from United States' Exhibit 204A and the stipulation of the parties dated January 14, 1953, and filed on January 30, 1953:

Reservoir Evaporation Losses.

Seminoe, Pathfinder and Alcova Reservoirs.

Evaporation will be computed daily based upon evaporation from Weather Bureau Standard 4 foot diameter Class "A" pan located at Pathfinder Reservoir. Daily evaporation will be multiplied by area of water surface of reservoir in acres and by co-efficient of 70% to reduce pan record to open water surface.

Glendo and Guernsey Reservoirs.

Compute same as above except use pan evaporation at Whalen Dam.

River Carriage Losses.

River carriage losses will be computed upon basis of area of river water surface as determined by aerial surveys made in 1939 and previous years and upon average monthly evaporation at Pathfinder reservoir for the period 1921 to 1939, inclusive, using a co-efficient of 70% to reduce pan records to open water surface.

Daily evaporation losses in second-feet for various sections of the river are shown in the following table:

TABLE

River Section	Area Acres	Daily Loss—Second Feet May	June	July	Aug.	Sept.
Alcova to Glendo Reservoir	6,740	43	61	70	61	45
Guernsey Reservoir to Whalen	560	4	5	6	5	4
Whalen to State Line	2,430	16	22	25	22	16

Above table is based upon mean evaporation at Pathfinder as follows: May .561 ft.; June .767 ft.; July .910 ft.; Aug. .799 ft.; Sept. .568 ft. Co-efficient of 70% to reduce pan record to open water surface.

Above table does not contain computed loss for section of river from Glendo Dam to head of Guernsey Reservoir (area 680 acres) because this area is less than submerged area of original river bed (940 acres) in Glendo Reservoir and is, therefore, considered as off-set.

Above table does not contain computed loss for section of river from Pathfinder Dam to head of Alcova Reservoir (area 170 acres) because this area is less than submerged area of original river bed in Alcova Reservoir and is, therefore, considered as off-set.

Likewise the area between Seminoe Dam and head of Pathfinder Reservoir is less than area of original river bed through Pathfinder Reservoir—considered as off-set. Evaporation losses will be divided between natural flow and storage water flowing in any section of river channel upon a proportional basis. This proportion will ordinarily be determined at the upper end of the section except under conditions of intervening accruals or diversions that materially change the ratio of storage to natural flow at the lower end of the section. In such event the average proportion for the section will be determined by using the mean ratio for the two ends of the section.

In the determination of transportation losses for the various sections of the stream, such time intervals for the passage of water from point to point shall be used as may be agreed upon by Nebraska, Wyoming and the United States, or in the absence of such agree-

ment, as may be decided upon from day to day by the manager of the government reservoirs, with such adjustments to be made by said manager from time to time as may be necessary to make as accurate a segregation as is possible.